

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DENNIS SUDBERRY,
 Plaintiff,
 vs.
 ISIDRO BACA, et al.,
 Defendants.

3:15-cv-00402-RCJ-WGC

ORDER

I. DISCUSSION

On February 12, 2016, the Court issued an order dismissing the complaint with leave to amend and directed Plaintiff to file an amended complaint within thirty days. (ECF No. 5 at 6). Forty-eight days later, the Court dismissed the case after Plaintiff failed to file an amended complaint. (ECF No. 9). Following the dismissal, on April 4, 2016, Plaintiff filed a notice of appeal, wherein he alleged he did not receive the Court's initial screening order. (ECF No. 11 at 4).

The Ninth Circuit issued an order on April 13, 2016, noting that Plaintiff's April 4, 2016 filing appears to request that the district court reconsider its February 12, 2016 order. (ECF No. 13 at 1). The Ninth Circuit determined that it should hold any further appellate consideration in abeyance pending the district court's consideration of whether Plaintiff's April 4, 2016 filing constitutes one of the motions listed in Federal Rule of Appellate Procedure 4(a)(4), and, if so, whether the motion should be granted or denied. (*Id.* at 1-2 (citing Fed. R.

1 App. P. 4(a)(4); *Leader Nat'l Ins. Co. v. Indus. Indem. Ins. Co.*, 19 F.3d 444, 445 (9th Cir.
2 1994)).

3 On April 21, 2016 the Court granted Plaintiff's motion to alter or amend the judgment,
4 vacated the March 31, 2016 final order challenged in the appeal, reopened proceedings, and
5 granted Plaintiff thirty days in which to file an amended complaint. (ECF No. 14 at 2:17-23).
6 On May 17, 2016 the Ninth Circuit dismissed Plaintiff's appeal for lack of jurisdiction, noting
7 that the Court granted Plaintiff's motion and permitted him an opportunity to amend. (ECF No.
8 15).

9 In light of the Ninth Circuit's recent dismissal of the appeal, the Court will permit Plaintiff
10 until June 8, 2016 to file his amended complaint. Failure to timely comply with the Court's
11 order shall result in the dismissal of this action, with prejudice.

12 **II. CONCLUSION**

13 It is therefore ordered that if Plaintiff chooses to file an amended complaint curing the
14 deficiencies of his complaint, as outlined in the Court's initial screening order, Plaintiff shall file
15 the amended complaint by June 8, 2016.

16 It is further ordered that no further extensions shall be granted.

17 It is further ordered that if Plaintiff does not timely file an amended complaint curing the
18 deficiencies of the complaint, this action may be dismissed with prejudice.

19 DATED: This 18th day of May, 2016.

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22 UNITED STATES MAGISTRATE JUDGE
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